

REMARKS

The above referenced application has been reviewed in light of the Non-Final Office Action mailed May 23, 2008. Claims 1-23 are currently pending in this application. Claims 1, 14, 15, and 20-23 have been amended herein. It is respectfully submitted that the claims pending in the application are fully supported by the specification, introduce no new matter, and are patentable over the prior art. In view of the amendments and the remarks to follow, allowance of this application is respectfully requested.

Claims 1-7, 11, 12, 14-18, and 20-23 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,797,888 to Yoon (hereinafter, Yoon). Applicant respectfully submits that independent claims 1, 15, 21, 22, and 23 are each allowable over Yoon because Yoon fails to disclose each and every element of each of the independent claims. Accordingly, the rejection of claims 1, 15, 21, 22, and 23 as being anticipated under 35 U.S.C. §102(b) over Yoon is respectfully traversed.

According to §2131 of the MPEP, to anticipate a claim, the reference must teach each and every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Independent claim 1 recites an instrument introducer comprising, *inter alia*, a tubular body portion and a distal end portion secured to the distal end of the tubular body, the distal end portion defining a pocket and including a distal end wall configured and adapted to facilitate passage of a surgical instrument.

An exemplary illustration of the pocket is shown in Figures 3 and 3A, reproduced herein below. The distal end wall 20 of the distal end portion defines a pocket 30. The pocket 30 concavely slopes distally from the annular side wall 22 and is defined by having a diameter which is less than the diameter of the annular side wall 22. In this manner, a greater axial length of distal end portion 14 of introducer 10 remains in contact with an outer surface of the surgical instrument "S."

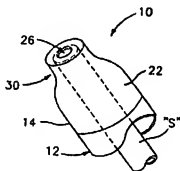


FIG. 3

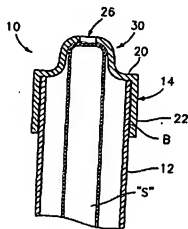


FIG. 3A

Yoon discloses a cannula 20 including an elongated tubular body 22, a seal 24 including a seal member 28 disposed along the tubular body 22, and a tubular pusher 26 disposed in the tubular body 22 and insertable through the seal 24 to move the seal member 28 from a normally closed position to an open position. As shown in Figure 3 of Yoon, reproduced herein below, the seal 24 is formed at the distal end 40 of the tubular body 22 and includes four seal members 28. Each seal member has "a generally spherical triangular shape with peripheral edges or sides that contact one another when closed to form a generally hemispherical or rounded tip at the distal end of the tubular body." (Col. 4, lines 46-49).

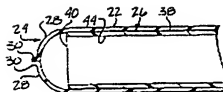


FIG.3

Applicant respectfully submits that Yoon fails to anticipate each and every element of claim 1, in that Yoon fails to disclose a distal end wall shaped to define a pocket, as the distal end wall of Yoon is in the shape of a hemi-sphere.

Accordingly, since Yoon does not disclose or suggest each and every element of claim 1, Applicant respectfully submits that the rejection of claim 1 as being anticipated under 35 U.S.C. §102(b) in view of Yoon should be withdrawn.

Since claims 2-7, 11, 12, and 14 depend, directly or indirectly, from claim 1 and contain all of the limitations of claim 1, Applicant respectfully submits that claims 2-7, 11, 12, and 14 are also not anticipated under 35 U.S.C. §102(b) over Yoon.

Independent claim 15 recites an instrument introducer comprising, *inter alia*, a hollow elongate cylindrical body and an elastomeric cap secured to the distal end portion of the cylindrical body, the cap defining a pocket and including a distal end wall having an outer terminal edge and an annular side wall depending from the outer terminal edge thereof, the distal end wall including an aperture formed in the pocket, wherein a center of the aperture is coaxially aligned with the central longitudinal axis.

As discussed hereinabove with regard to claim 1, Yoon fails to teach or disclose a cap defining a pocket. Therefore, Applicant respectfully submits that the rejection of claim 15 under 35 U.S.C. §102(b) in view of Yoon should be withdrawn.

Since claims 16-18 and 20 depend, directly or indirectly, from claim 15 and contain all of the limitations of claim 15, Applicant respectfully submits that claims 16-18 and 20 are also not anticipated under 35 U.S.C. §102(b) over Yoon.

Independent claims 21 and 22 both recite a method of introducing a surgical instrument into a cavity or a body opening of a patient, comprising, *inter alia*, the step of providing an instrument introducer, wherein the instrument introducer includes a hollow tubular body and a resilient cap, the cap defining a pocket and including a distal end wall having an aperture formed therein.

As discussed hereinabove with regard to claim 1, Yoon fails to teach or disclose, at least, a cap defining a pocket. Therefore, Applicant respectfully submits that the rejection of claims 21 and 22 under 35 U.S.C. §102(b) in view of Yoon should be withdrawn.

Independent claim 23 recites an instrument introducer comprising, *inter alia*, a tubular body portion having a proximal end and a distal end, and a distal end portion secured to the distal end of the tubular body portion, the distal end portion defining a pocket including a distal end wall configured and adapted to facilitate passage of a surgical instrument therethrough.

As discussed hereinabove with regard to claim 1, Yoon fails to teach or disclose, at least, that the distal end portion defines a pocket. Therefore, Applicant respectfully submits that the rejection of claim 23 under 35 U.S.C. §102(b) in view of Yoon should be withdrawn.

Claims 1-20 and 23 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,792,074 to Turkel et al. (hereinafter, Turkel). Applicant respectfully submits that independent claims 1, 15, and 23 are allowable over Turkel because Turkel fails to disclose each

and every element of the independent claims. Accordingly, the rejection of claims 1, 15, and 23 as being anticipated under 35 U.S.C. §102(b) over Turkel is respectfully traversed.

Independent claim 1 recites an instrument introducer comprising, *inter alia*, a tubular body portion and a distal end portion secured to the distal end of the tubular body, the distal end portion defining a pocket and including a distal end wall configured and adapted to facilitate passage of a surgical instrument.

Turkel discloses a protected microbiological sampling brush assembly 10 including a sampling brush 12, an inner catheter 18 which houses the brush 12, an outer catheter 22 which houses the inner catheter 18, and an elastomeric tip 24 which is rigidly attached to the distal end 22a of the outer catheter 22 and which has a weakened end 26. As shown in Fig. 2a, reproduced below, the tip 24 is rounded towards end 26 or has a hemispherical profile. A ramp 39 may be provided adjacent the distal end to facilitate the opening of the weakened end 26.

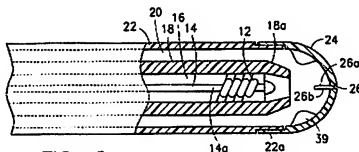


FIG. 2a

Applicant respectfully submits that Turkel fails to anticipate each and every element of claim 1, in that Turkel fails to disclose a distal end portion shaped to define a pocket, as the distal end portion of Turkel is merely rounded in shape.

Accordingly, since Turkel does not disclose or suggest each and every element of claim 1, Applicant respectfully submits that the rejection of claim 1 as being anticipated under 35 U.S.C. §102(b) in view of Turkel should be withdrawn.

Since claims 2-14 depend, directly or indirectly, from claim 1 and contain all of the limitations of claim 1, Applicant respectfully submits that claims 2-14 are also not anticipated under 35 U.S.C. §102(b) over Turkel.

Independent claim 15 recites an instrument introducer comprising, *inter alia*, a hollow elongate cylindrical body and an elastomeric cap secured to the distal end portion of the cylindrical body, the cap defining a pocket and including a distal end wall having an outer terminal edge and an annular side wall depending from the outer terminal edge thereof, the distal end wall including an aperture formed in the pocket.

As discussed hereinabove with regard to claim 1, Turkel fails to teach or disclose a distal end portion defining a pocket. Therefore, Applicant respectfully submits that the rejection of claim 15 under 35 U.S.C. §102(b) in view of Turkel should be withdrawn.

Since claims 16-20 depend, directly or indirectly, from claim 15 and contain all of the limitations of claim 1, Applicant respectfully submits that claims 16-20 are also not anticipated under 35 U.S.C. §102(b) over Turkel.

Independent claim 23 recites an instrument introducer comprising, *inter alia*, a tubular body portion having a proximal end and a distal end, and a distal end portion secured to the distal end of the tubular body portion, the distal end portion defining a pocket including a distal end wall configured and adapted to facilitate passage of a surgical instrument therethrough.

As discussed hereinabove with regard to claim 1, Turkel fails to teach or disclose, at least, that the distal end portion defines a pocket. Therefore, Applicant respectfully submits that the rejection of claim 23 under 35 U.S.C. §102(b) in view of Turkel should be withdrawn.


Therefore, the prior art references do not teach or suggest all of the claim limitations of claims 1-23. For at least these reasons, *inter alia*, Applicant believes that claims 1-23 define over Yoon and Turkel and are in condition for allowance. Therefore, Applicant respectfully submits that the rejection under 35 U.S.C. §102(b) has been overcome.

In addition to the foregoing, dependent claims 14 and 20 have been amended herein in a manner which is believed to be allowable over the art of record.

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are in proper format and are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is invited to contact the undersigned at the telephone number listed below with any questions concerning this application.

Early and favorable response on the merits is earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicant(s)

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road - Suite 225
Melville, New York 11747
Tel.: (631) 501-5700
Fax: (631) 501-3526